

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MICHIGAN-SOUTHERN DIVISION
399 Federal Bldg., 110 Michigan NW, Grand Rapids Michigan 49503
Telephone: (616) 456-2381

In Re:

HERCIK V LANGLAND

CASE #: 1:09-cv-324

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MOTION FOR EMERGENCY STAY PENDING APPEAL

NOW COMES, Appellant, Philip R. Herick, Jr., by and through his Co-Council, John A. Watts, P.C. and in requesting a Stay of the Sale of the Subject property pending appeal pursuant to Bankruptcy Rule 8005 represents unto the Court as follows:

1. The Adversary Proceeding was filed in Barbara Rebecca Einset's Chapter 7 Bankruptcy against Philip R. Herick, Jr., as co-owner of the 82-acre parcel.
2. That a Stipulation of Settlement Authorizing Philip R. Herick, Jr. to Purchase the Property in Adversary #06-80998 entered 10/11/07 and executed by Mr. Herick's attorney, Robert J. Pleznac, Mr. Herick's Trustee, Joseph Chrystler, Trustee, Stephen Langeland and the Trustee's Attorney, Paul Davidoff.
3. Judge Hughes refused to sign an Order confirming the Stipulation for Settlement Authorizing Philip R. Herick, Jr., to Purchase the Property and the Order of Refusal is dated February 20, 2008, Judge Hughes denied the request because there was no comparison between what the Estate would net with and without the Settlement.
4. Philip R. Herick, Jr.'s Chapter 12 Bankruptcy was later dismissed.
5. That on or about February 18, 2009 Philip R. Herick, Jr. tendered certified funds in the amount of \$30,000.00 to the Trustee. The Trustee refused to accept the tender.

6. The Order Confirming Sale of Real Estate was entered by the Bankruptcy Court on February 20, 2009.
7. An objection to the Order Confirming Sale of Real Estate was timely filed.
8. That a timely Notice of Appeal As of Right of the Order Confirming Sale of Real Estate has been filed, pursuant to Federal Rules of Bankruptcy Procedure 8001(a) and 8002.
9. That Appellant, Philip R. Herick, Jr., will be irreparable harmed if the sale proceeds.
10. That Appellant has a valid argument and there is a likelihood for success, as the Bankruptcy Court did not weigh the harm caused to Appellant, Philip R. Herick, Jr., versus the benefit to the Estate if the sale is completed pursuant to 363(h)(3).
11. That the Debtor's estate will net more and be benefited more if Philip R. Herick, Jr.'s offer of \$30,000.00 is accepted and the Bankruptcy Judge failed to adequately take this benefit into account or consideration.
12. That there is little likelihood of irreparable harm to the Chapter 7 Estate or the prospective purchaser, in fact a likely to benefit Ms. Einset's Chapter 7 Estate.
13. The Stay will serve the public interest as fairness and justice will be further served.
14. Appellant would incorporate hereby reference thereto the Issues on Appeal filed on March 12, 2009.
15. Appellant previously filed the Motion For Emergency Stay Pending Appeal in Bankruptcy proceeding and it was denied on March 11, 2009.
16. This Motion for Stay is filed pursuant to Rule 8007(c) and or 7062 and 8005 of the U.S. Bankruptcy Code requesting an emergency immediate Order or for an Appeal Bond.

WHEREFORE, Appellant, Philip R. Herick, Jr., prays that the Bankruptcy Court grant a Stay on the Order Confirming the Sale of Real Estate pending Appeal.

Respectfully submitted,

JOHN A. WATTS, P.C.

Dated: 4/22/2009

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